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5

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8

9 JAMES R. GLIDEWELL DENTAL
10 CERAMICS, INC. DBA
11 GLIDEWELL LABORATORIES, a
California corporation,

12 Plaintiff

13 vs.

14 KEATING DENTAL ARTS, INC., a
15 California corporation,

16 Defendant.

17) Case No. SACV11-01309-DOC(ANx)
18)

19) **PLAINTIFF'S OPPOSITION TO**
20) **DEFENDANT'S APPLICATION TO**
21) **RESCHEDULE HEARING ON**
22) **MOTION FOR PARTIAL SUMMARY**
23) **JUDGMENT**

24) **Current Hearing Date**
25) **March 5, 2012 (8:30 AM)**

26) **Proposed Hearing Date**
27) **Date: March 26, 2012 (8:30 AM)**

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20 Defendant has filed a Motion to Reschedule a Hearing on a Motion For
21 Partial Summary Judgment (MSJ) (currently scheduled for March 5, 2012 at
22 8:30 AM) to March 26, 2012 at 8:30 AM. Defendant predicates its motion on
23 delays caused by "a prolonged visit from...out-of-state family"; the
24 "December/January holidays generally"; and "a severe and prolonged bout of
25 recent flu epidemic". Plaintiff opposes this motion because it is believed that
26 the Defendant's MSJ should be dismissed and that there should be no hearing
27 regarding that motion on March 5, 2012 or on any other day.

1 Plaintiff's opposition is based upon:

2 (1) Defendant filed its MSJ on or about February 13, 2012 with
3 certain exhibits thereto filed on or about February 14, 2012. In other words,
4 Defendant didn't file its MSJ until 21 days before the March 5, 2012 hearing
5 date. Local Rule 6-1 requires that filing and service of motions be effected not
6 later than 28 days before the date set for hearing.

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8 (2) The Court may recall that Defendant's counsel insisted at the
9 scheduling conference held on December 16, 2011 that Defendant be
10 permitted to file the MSJ Motion and that he himself chose a hearing date of
11 March 5, 2012 to which Plaintiff's counsel acquiesced. Defendant's counsel
12 persuaded the Court to grant him such opportunity based upon his assertion
13 that he would not require any discovery to prepare his Motion. On a number
14 of occasions thereafter, counsel assured the undersigned that he would be
15 filing and serving his Motion at an early date including, initially, January 4,
16 2012 in order to "give Plaintiff plenty of time to respond" (see Tachner's
17 Declaration herein). What ensued thereafter were a series of emails and
18 telephone calls from Defendant's counsel asserting imminent filing and
19 service of said Motion, but without any "follow-through" until after the Local
20 Rule 6-1 deadline had passed.

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22 (3) A principal reason for Defendant's delay in filing the MSJ as
23 stated to Plaintiff's counsel by Defendant's counsel was an assertion that he
24 had had flooding caused by a water main break at his home (see Mr. Holland's
25 email of February 3, 2012, Exhibit to Declaration of Leonard Tachner). For
26 whatever reason, this event was not mentioned by Defendant's counsel in his
27 Motion to Reschedule the March 5 hearing date. His reasons relate to
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1 holidays, family and flu, not flood. Without casting any aspersions on Mr.
2 Holland's credibility, one has to wonder what really were his reasons for "his
3 not insubstantial delays" from January 4, 2012 (his originally promised date of
4 filing and service of the MSJ) to at least February 13, 2012 (a full week after
5 the Local Rule 6-1 deadline).

(4) One has to wonder also because during this period of delay evidently caused by holidays, family, flu and flood, Mr. Holland still managed to file another pending motion seeking leave to amend his Answer to add affirmative defenses and counterclaims. Why is it that holidays, family, flu and flood did not prevent Defendant's counsel from filing that motion before the Local Rule 6-1 deadline?

14 Based upon the foregoing, it is believed that the Court should:

15 (a) Dismiss Defendant's motion to reschedule the March 5 hearing
16 date on its MSJ;

17 (b) Dismiss Defendant's MSJ because it was filed and served after
18 the Local Rule 6-1 deadline:

19 (c) Deny Defendant's pending motion seeking leave to amend its
20 Answer; and

21 (d) Order that this Action proceed without further delay.

25 DATED: February 15, 2012 By: /s/ Leonard Tachner
26 Leonard Tachner
Attorney for Plaintiff

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